Filed 1/18/19 In re A.A. CA1/3

NOT TO BE PUBLISHED IN OFFICIAL REPORTS

IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

FIRST APPELLATE DISTRICT

DIVISION THREE

In re A.A., a Person Coming Under the Juvenile Court Law.	
SAN MATEO COUNTY HUMAN SERVICES AGENCY, Plaintiff and Respondent, v. A.A., Defendant and Appellant.	A154258 (San Mateo County Super. Ct. No. 17JD0829)

Andrea A. (Mother) appeals from a judgment of the juvenile court establishing jurisdiction over her daughter, A.A. (Minor). The appeal raises three contentions: (1) the juvenile court's jurisdictional finding based on Mother's conduct is unsupported by substantial evidence; (2) the juvenile court erred in denying her reunification services; and (3) the juvenile court's visitation order was an abuse of discretion. We affirm.

FACTUAL AND PROCEDURAL BACKGROUND

Prior family history and prior dependency proceeding

Minor was born in the fall of 2008. In November 2012, the San Mateo County Human Services Agency (Agency) received a referral after Mother was hospitalized for suicidal ideation and self-harm. Agency deemed the referral inconclusive but initiated

dependency proceedings pursuant to Welfare and Institutions Code section 300,[1] subdivision (b). The juvenile court detained Minor, placing her with her maternal grandmother while Mother was offered 12 months of reunification services. In February 2014, the juvenile court terminated reunification services because Mother failed to make progress with her drug use and mental health issues. In September 2014, the juvenile court appointed Minor's maternal grandmother to be her legal guardian. In February 2015, the juvenile court terminated dependency jurisdiction but retained jurisdiction over the guardianship.

New dependency petition

On September 20, 2017, Agency filed a new juvenile dependency petition pursuant to section 300, subdivisions (b) and (g), with four counts. First, in count b (1)-1, Agency alleged Minor was at substantial risk of serious physical harm as a result of her guardian's failure to adequately protect her. The count stated the guardian suffered a stroke in June 2017, could not provide Minor care while recuperating, and voluntarily agreed to place Minor in emergency shelter care due to concerns that Minor's caregiver—a family friend—was using methamphetamine and had recently used methamphetamine with Mother. The count further alleged Agency offered Mother services after she said she wanted to regain custody of Minor, but Mother did not complete Agency's recommended substance abuse treatment and she used methamphetamine with Minor's caregiver.

Second, in count b (1)-2, Agency alleged Minor was at substantial risk of serious physical harm as a result of Mother's failure to adequately protect her. The count stated Mother had extensive mental health and substance abuse issues (methamphetamine and alcohol) that led to Minor's removal from her care and termination of reunification services in 2014. Since then, Mother has been unable to mitigate those issues and admitted using methamphetamine on September 18, 2017 with Minor's caregiver.

[1] All further statutory references are to the Welfare and Institutions Code unless otherwise indicated.

Third, count g-1 largely mirrored count b (1)-1, but also alleged Minor's guardian was incapacitated and could not arrange for Minor's care. Last, count g-2 alleged the whereabouts of Minor's presumed father were unknown, and he left her without any provision for support.

Detention report and hearing

On September 21, 2017, the juvenile court held a detention hearing and admitted Agency's detention report into evidence. The detention report stated the following. Minor's guardian suffered a stroke, and Minor began staying with a caregiver when the guardian went to a skilled nursing facility on June 26, 2017. On August 15, 2017, Agency held a meeting at the Latino Commission's Residential Treatment Facility, where Mother was receiving substance abuse treatment, and came up with an "action plan." Agency offered Mother "voluntary case services" after Mother expressed a desire to regain custody of Minor. The action plan provided Minor would remain with the caregiver while Mother completed 90 days of treatment (slated to end on September 5, 2017) plus an extra 30 days of treatment at the Latino Commission. Thereafter Mother would begin intensive outpatient substance abuse treatment and continue with mental health treatment. However, on September 5, 2017, while Agency was still creating a voluntary case plan, Mother left treatment without completing the additional 30 days. On September 6, 2017, Mother signed a "safety plan" stating she would follow up with the Latino Commission and sign up for its intensive outpatient program, but she never did this. On September 18, 2017, Mother admitted to a social worker that she used methamphetamine the night before with Minor's caregiver in the caregiver's home after Minor had gone to bed. She also admitted she stopped taking her anti-depressant. Mother initially indicated Minor was asleep and so was not at any risk. Mother conceded, however, there would have been no one to attend to Minor if she had awakened or if an emergency had arisen while Mother and the caretaker were under the influence. Due to this episode involving Minor's caretaker, the guardian agreed to place Minor in emergency shelter care.

Based on the detention report, the juvenile court detained Minor. The juvenile court adopted Agency's recommendation regarding Mother's visitation with Minor, giving Mother one hour of a supervised visit per week and according Agency the discretion to increase the frequency and duration of the visits.

Jurisdiction/disposition report and addenda

On October 27, 2017, Agency filed a jurisdiction and disposition report. Agency reported that in late September 2017 Mother spent three days in a detoxication facility, then enrolled in an inpatient substance abuse treatment facility—the Women's Recovery Association (WRA)—on October 3, 2017. WRA staff informed Agency that Mother left the facility on October 8, 2017 and tested positive for methamphetamines when she returned later that day. Mother left again on October 9, 2017 but returned the following day. WRA staff reported Mother was doing well as of October 23, 2017. With regard to Minor's guardian, as of October 25, 2017, she did not have a discharge date from her skilled nursing facility. As for Minor's father, he had not contacted Agency. Agency recommended the juvenile court sustain the dependency petition and take custody of Minor because her guardian was incapacitated. Further, Minor was at risk of substantial harm if left in Mother's care due to Mother's extensive drug history and inability to comply with Agency's plans, as well as Minor's young age and vulnerability. Agency also recommended reunification services be offered to the guardian and the father, but bypassed for Mother pursuant to section 361.5, subdivision (b)(13), due to her ongoing substance abuse.

On December 22, 2017, Agency filed "Addendum Report # 1" to its jurisdiction and disposition report. That addendum included Agency's report that Mother was scheduled to participate in a psychological evaluation on December 29, 2017, that she had left inpatient treatment at the WRA on November 21, 2017, and that she denied relapsing while there.

On March 14, 2018, Agency filed "Addendum Report # 2." In it, Agency reported Mother attended her scheduled psychological evaluation, but the psychologist terminated the evaluation without completing it. The psychologist provided a letter explaining what

occurred. In sum, Mother complained about the length of the appointment, saying she had nothing to eat or drink. After the psychologist agreed to do part of the evaluation on another day, and after answering about 12 questions, Mother accused the psychologist of discriminating against her and violating her rights when he was trying to explain the purpose of the evaluation and why it was warranted. Agency scheduled another psychological evaluation for two days in mid-February 2018, which Mother failed to attend. Mother attended the first day of a rescheduled evaluation in March 2018 but failed to appear for the second. The psychologist indicated he was hesitant to schedule another evaluation but stated, based on his meeting with her, "he would most likely determine that she is struggling with both mental health and substance abuse issues" and "she just cannot get it together." As for the guardian, her skilled nursing facility reported she no longer met the level of need to stay there and her health had stabilized, but she had not yet been discharged.

Jurisdiction/disposition hearing

On March 19, 2018, the juvenile court held a contested jurisdiction and disposition hearing. The petition was amended at the hearing so that count b (1)-1 alleged Minor is at substantial risk of serious physical harm as a result of the guardian's "inability," rather than "failure," to adequately protect her. The amended petition filed by Agency also amended count b (1)-2 to allege Minor is at substantial risk of serious physical harm as a result of Mother's "inability," rather than "failure," to adequately protect her.

The juvenile court admitted into evidence Agency's detention report, jurisdiction and disposition report, and both addenda to the jurisdiction and disposition report. Social worker Tiffany Aguilar testified Mother has struggled with substance abuse since at least 2012, and Mother recently left treatment at the WRC on November 21, 2017. Aguilar stated Mother failed to take a single drug test in January or February, so it was unknown if she was still using drugs. Although Aguilar expressed concern about Mother's ongoing methamphetamine use and mental health issues, she also testified that since the inception of this case, Mother's drug use resulted in no incident that made Aguilar feel Minor's health or safety was at risk. Aguilar testified Minor's guardian was doing better, would

be transitioning out of the nursing facility soon, and appeared to be cognitively capable of caring for a child though some physical limitations would hinder her from providing such care.

Mother also testified. Among other things, she asserted she completed two rehabilitation programs successfully: one before the guardian suffered a stroke, and another in 2011. As of the date of the hearing, she was 32 days sober, and had been supporting her sobriety by attending Alcoholics Anonymous and Narcotics Anonymous meetings at least four days a week for about a month and a half. She was seeing a psychiatrist once a month and regularly taking medications. Mother has abused alcohol and methamphetamine for about 10 years, and she admitted she did not consistently complete drug tests for Agency because she knew the tests would be positive.

The juvenile court sustained all of the counts in the amended petition. The juvenile court then proceeded with the dispositional portion of the hearing. As relevant here, Agency and counsel for Minor opposed reunification services for Mother, citing section 361.5, subdivision (b)(13), and Mother's repeated failures to participate in drug rehabilitation services. Mother did not challenge the application of section 361.5, subdivision (b)(13), but she argued reunification services were in Minor's best interests. The juvenile court agreed reunification services should be bypassed per section 361.5, subdivision (b)(13), due to Mother's "repeated failures in her drug treatment programs" and bypass would be in Minor's best interests. The juvenile court granted reunification services for the guardian. As for visitation, the juvenile court granted Mother visits once every other week, and gave Agency the discretion to increase the frequency in accord with Mother's progress in her programs and sobriety. Mother appeals.

DISCUSSION

I. Jurisdiction was proper

The juvenile court exercised jurisdiction over Minor after having sustained allegations against Mother at the March 19, 2018 hearing, as well as allegations against the guardian under section 300, subdivisions (b) and (g), and against the father under section 300, subdivision (g). In this appeal, Mother does not challenge the juvenile

court's jurisdiction over Minor, and she concedes juvenile court jurisdiction over Minor is appropriate whether or not any allegations based on her own conduct were properly sustained. Mother contends, however, that this court should exercise its discretion to consider her challenge to the sufficiency of the evidence concerning the allegations based on her conduct and strike all such allegations from the petition amended on March 19, 2018, because those sustained allegations are or will be prejudicial to her interests. Specifically, Mother asks us to evaluate whether the evidence was insufficient to establish that her conduct harmed or posed a risk of harm to Minor because, although she has an ongoing drug problem and relapsed around the time the Agency intervened, Minor was under the guardian's care and custody when she came to the Agency's attention, and Minor came to the Agency's attention only because the guardian had a stroke.

As a general rule, " '[w]hen a dependency petition alleges multiple grounds for its assertion that a minor comes within the dependency court's jurisdiction, a reviewing court can affirm the juvenile court's finding of jurisdiction over the minor if any one of the statutory bases for jurisdiction that are enumerated in the petition is supported by substantial evidence. In such a case, the reviewing court need not consider whether any or all of the other alleged statutory grounds for jurisdiction are supported by the evidence.' " (*In re I.J.* (2013) 56 Cal.4th 766, 773.) "[Dependency] jurisdiction is asserted over the child, not the parent [or guardian]," and "[a] jurisdictional finding involving the conduct of a particular parent [or guardian] is not necessary for the court to enter orders binding on that parent [or guardian], once dependency jurisdiction has been established. [Citation.] As a result, it is commonly said that a jurisdictional finding involving one parent [or guardian] is ' "good against both. More accurately, the minor is a dependent if the actions of either parent [or guardian] bring[s] [him] [or her] within one of the statutory definitions of a dependent." ' [Citation.] For this reason, an appellate court may decline to address the evidentiary support for any remaining jurisdictional findings once a single finding has been found to be supported by the evidence." (*In re I.A.* (2011) 201 Cal.App.4th 1484, 1492.) Notably, "[a]lthough reviewing courts sometimes speak of jurisdictional findings being made 'as to' a particular parent [or

guardian] [citation], the dependency court does not, in fact, make jurisdictional findings 'as to' a particular parent [or guardian]. The findings ordinarily involve the conduct, or lack thereof, of one or both parents [or guardian], but the findings are made with respect to the child, not the parents [or guardian]." (*Id.* at p. 1493, fn. 6.)

Case law recognizes what has been termed a "narrow exception" to the aforementioned general rule. (*In re Briana V.* (2015) 236 Cal.App.4th 297, 310.) Namely, a reviewing court *may* exercise its discretion and "reach the merits of a challenge to any jurisdictional finding when the finding (1) serves as the basis for dispositional orders that are also challenged on appeal [citation]; (2) could be prejudicial to the appellant or could potentially impact the current or future dependency proceedings [citations]; or (3) 'could have other consequences for [the appellant], beyond jurisdiction.' " (*In re Drake M.* (2012) 211 Cal.App.4th 754, 763–764 (*Drake M.*).)

Mother invokes this exception, arguing this court should exercise its discretion to consider her challenge to the sustained allegations concerning her conduct in the petition because they have been or will be prejudicial to her. More specifically, she claims that the contested allegations concerning her conduct formed the basis of the juvenile court's limited visitation order and denial of reunification services; that the denial of reunification services could lead to a speedy termination of her parental rights; and that the sustained allegations could impact her if she finds herself involved in family law proceedings.

Mother fails to show that any of the three exceptions warranting the exercise of our discretion applies in this case. Contrary to Mother's argument, the jurisdictional finding itself did not serve as the basis for the juvenile court's dispositional orders denying reunification services and limiting visitation. Rather, the juvenile court focused only on Mother's chronic substance abuse problem when articulating its reasons for its dispositional orders. Mother did not deny her chronic substance abuse problem at the hearing or counter the position of Agency and Minor that she fell within section 361.5, subdivision (b)(13), allowing the court to bypass reunification services. Indeed, on appeal, she concedes such matters. As discussed below, the evidence of Mother's

chronic substance abuse issues amply supports the court's visitation order and its decision to bypass reunification services under section 361.5, subdivision (b)(13).

Moreover, Mother has not established that the jurisdictional finding based on her conduct could affect her in future dependency proceedings. Mother's sole claim on this point appears to be that the lack of reunification services "could subsequently lead to a speedy termination of her parental rights." However, reunification services had already been terminated as to Mother in 2014, and, again, the denial of such services were based on her chronic substance abuse. Regardless of any jurisdictional finding based on Mother's conduct, the evidence concerning her ongoing substance abuse problems will almost certainly be available in any future dependency proceeding. As for Mother's claim that the jurisdictional finding could affect her in future family law proceedings, this is speculative. There is no indication in the record that family law proceedings are impending or even likely.

Mother's reliance on *Drake M.*, *supra*, 211 Cal.App.4th 754 and *In re D.P.* (2014) 225 Cal.App.4th 898 (*D.P.*), is misplaced. Unlike the situation in *D.P.*, this is not a case involving intentional harm to the child. Further, as discussed, Mother does not identify how the jurisdictional finding based on her conduct will have "far-reaching implications" with regard to future dependency proceedings or her parental rights. Thus, the situation here is distinguishable from that in *Drake M.*, where the court exercised its discretion to consider one parent's challenge to a jurisdictional finding based on his conduct despite unchallenged findings based on another parent's conduct. (*Drake M.*, *supra*, 211 Cal.App.4th at p. 763.)

Mother's reliance on *In re Anthony G.* (2011) 194 Cal.App.4th 1060 (*Anthony G.*) is also misplaced. *Anthony G.* did not explain its reasons for exercising its discretion to consider the merits of the challenge, and it did not hold that appellate review is warranted for any and all challenges to the sufficiency of the evidence for a jurisdictional finding, even where jurisdiction is otherwise established. As case law makes clear, "an appellate court may decline to address the evidentiary support for any . . . jurisdictional findings

once a single finding has been found to be supported by the evidence." (*I.A.*, *supra*, 201 Cal.App.4th at p. 1492; *In re Alexis E.* (2009) 171 Cal.App.4th 438, 451.)

In sum, we decline to exercise our discretion to consider Mother's challenge to the jurisdictional finding based on her conduct. (*I.A.*, *supra*, 201 Cal.App.4th at p. 1490 [rejecting review of a purely academic question].)

II. The juvenile court did not err by denying Mother reunification services

Mother challenges the dispositional order denying her reunification services under section 361.5, subdivision (b)(13).[2] Although Mother admits she falls within section 361.5, subdivision (b)(13), she contends the juvenile court erred in determining that reunification was not in Minor's best interests pursuant to section 361.5, subdivision (c).

Section 361.5, subdivision (c), provides in relevant part: "The court shall not order reunification for a parent or guardian described in paragraph . . . (13) . . . of subdivision (b) unless the court finds, by clear and convincing evidence, that reunification is in the best interest of the child." (§ 361.5, subd. (c)(2).) The rules governing reunification decisions are settled. " ' "[O]nce it is determined one of the situations outlined in subdivision (b) applies, the general rule favoring reunification is replaced by a legislative assumption that offering services would be an unwise use of governmental resources." ' " (*In re William B.* (2008) 163 Cal.App.4th 1220, 1227.) "The burden is on the parent to change that assumption and show that reunification would serve the best interests of the child." (*Ibid.*) When determining whether the best interests

[2] Section 361.5, subdivision (b) contains exceptions, also referred to as "bypass provisions," to the general rule requiring a parent to be provided reunification services. Subdivision (b)(13) of section 361.5 states: "Reunification services need not be provided to a parent or guardian described in this subdivision when the court finds, by clear and convincing evidence, any of the following: [¶] . . . [¶] (13) That the parent or guardian of the child has a history of extensive, abusive, and chronic use of drugs or alcohol and has resisted prior court-ordered treatment for this problem during a three-year period immediately prior to the filing of the petition that brought that child to the court's attention, or has failed or refused to comply with a program of drug or alcohol treatment described in the case plan required by Section 358.1 on at least two prior occasions, even though the programs identified were available and accessible."

of a child warrants reunification services, courts should consider " ' "a parent's current efforts and fitness as well as the parent's history"; "[t]he gravity of the problem that led to the dependency"; the strength of the bonds between the child and the parent and between the child and the caregiver; and "the child's need for stability and continuity." ' [Citation.] '[A]t least part of the best interest analysis must be a finding that further reunification services have a likelihood of success. In other words, there must be some "reasonable basis to conclude" that reunification is possible before services are offered to a parent who need not be provided them.' " (*In re G.L.* (2014) 222 Cal.App.4th 1153, 1164 (*G.L.*).) We review the juvenile court's determination for abuse of discretion. (*Id.* at pp. 1164–1165.)

In this case, the juvenile court expressly found at the time of the disposition hearing that it would be in Minor's best interest to bypass reunification services. We find no abuse of discretion. The record amply supports, and Mother does not contest, that she has a chronic substance abuse problem. Mother testified she had abused methamphetamine for 10 years. In the prior dependency case, a guardianship was established over Minor and the juvenile court terminated reunification services when Mother steadily declined after being offered alcohol and drug treatment services over the course of 12 months. (§ 361.5, subd. (c)(4) [stating the "failure of the parent to respond to previous services" is one factor indicating reunification services are unlikely to be successful].) After Minor's guardian suffered a stroke in mid-2017, and because Mother expressed a desire to regain custody of Minor, Agency offered Mother an action plan, a safety plan, and voluntary case services. These plans required Mother to engage in substance abuse treatment, but she failed to complete any of them. Instead, she admitted using methamphetamine with Minor's caregiver while Minor was sleeping under the same roof, resulting in Minor's placement in an emergency shelter. Although Mother testified she was 32 days sober at the March 19, 2018 disposition hearing, the record also showed Mother had not taken any drug tests in January or February 2018. Mother indicated she did not test for Agency because she knew those tests would be positive.

Mother now claims reunification services were in Minor's best interests because of her close and loving relationship with Minor and because Minor struggled with sadness when she could not reach Mother by phone. We acknowledge the record supports Mother's close bond and positive visits with Minor. But the juvenile court was aware of this evidence when it made its decision, and substantial evidence nonetheless supported its conclusion that reunification services had no likelihood of success at that time. (*G.L.*, *supra*, 222 Cal.App.4th at p. 1164.)

Given this record, the order denying reunification services was not an abuse of discretion. (*William B.*, *supra*, 163 Cal.App.4th at p. 1229.)

III. The juvenile court's visitation order was not an abuse of discretion

The juvenile court ordered visits between Mother and Minor once per week, every other week, for a total of two hours per month. The court, however, also granted Agency the discretion to increase the frequency of visits in accord with Mother's progress in her programs and sobriety. Mother now argues the juvenile court abused its discretion when it ordered such limited visitation.

After a denial of reunification services pursuant to section 361.5, subdivision (b)(13), "[t]he court may continue to permit the parent to visit the child unless it finds that visitation would be detrimental to the child." (§ 361.5, subd. (f).) "An order setting visitation terms is generally reviewed for abuse of discretion." (*Los Angeles County Dept. of Children & Family Services v. Superior Court* (2006) 145 Cal.App.4th 692, 699, fn. 6.) " ' " 'The appropriate test for abuse of discretion is whether the trial court exceeded the bounds of reason. When two or more inferences can reasonably be deduced from the facts, the reviewing court has no authority to substitute its decision for that of the trial court.' " [Citations.]' [Citation.] The abuse of discretion standard warrants that we apply a very high degree of deference to the decision of the juvenile court." (*In re J.N.* (2006) 138 Cal.App.4th 450, 459.)

Here, we find no abuse of discretion. Mother again relies on her close relationship with Minor to argue that more frequent visits were warranted. However, the evidence of Mother's longstanding and ongoing substance abuse problem supported the juvenile

court's visitation order. On this record, it cannot be said the juvenile court's visitation order exceeded the bounds of reason, particularly since the juvenile court gave Agency the discretion to increase visitation frequency if Mother makes progress with her sobriety. Mother's claim that Agency failed to prove more frequent visits would be detrimental to Minor is unpersuasive. Mother cites no authority to support the juvenile court's discretion was constrained unless Agency could show such detriment. (See *J.N.*, *supra*, 138 Cal.App.4th at pp. 459–460.)

We conclude the juvenile court's visitation order was not an abuse of discretion.

DISPOSITION

The jurisdictional and dispositional orders are affirmed.

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Fujisaki, J.

We concur:

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Siggins, P.J.

_____
Jenkins, J.

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